

REMARKS

Claims 1-56 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 3, 4, 6-9 and 15-23 of copending U.S. Patent Application No. 09/931,123.

Without even addressing the merits of the double patenting rejection, Applicant respectfully submits that it should be withdrawn. This is a provisional obviousness-type double patenting rejection, in the earlier filed of two pending applications, and is the only basis cited for rejection. The MPEP is clear that a rejection should not be issued in this situation:

If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

MPEP §804(I)(B)(1).

Nevertheless, in an effort to expedite prosecution (Applicant notes that this application was filed on February 16, 2000, more than **seven** years ago, and that a first Office Action was issued on March 27, 2002, more than **five** years ago),

Applicant is filing herewith a Terminal Disclaimer to obviate the double patenting rejection, along with the appropriate fee therefor.

For the foregoing reasons, Applicant respectfully submits that all pending claims, namely Claims 1-56, are patentable over the references of record, and earnestly solicits allowance of the same.

Respectfully submitted,



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